

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JUNE 12,00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Drakon International, Inc.

Serial No. 75/225,701

J. Andrew McKinney, Jr. of Epstein, Edell & Retzer for
Drakon International, Inc.

Robert Lorenzo, Trademark Examining Attorney, Law Office
111 (Craig Taylor, Managing Attorney).

Before Simms, Hohein and Chapman, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Drakon International, Inc. (applicant), a Delaware corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark Z VODKA ("VODKA" disclaimed) for vodka.¹ The Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 USC §1052(d), on the basis of Registration No.

2,042,283, issued March 4, 1997, for the mark shown below for clear alcohol beverages produced from a brewed malt base.

The words "REFRESHING ALCOHOL BEVERAGE" are disclaimed. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We affirm.

Essentially, it is the Examining Attorney's position that, with respect to the marks, one feature of a mark may be more significant in creating a commercial impression and that greater weight may be given to that dominant feature in the likelihood-of-confusion analysis. The Examining Attorney argues that the letter "Z" is the dominant and arbitrary element of the respective marks and that that

¹ The application, Serial No. 75/225,701, filed January 14, 1997, is based upon applicant's allegation of a bona fide

element of the marks would be pronounced identically. With respect to the goods, vodka versus a clear alcoholic beverage from a brewed malt base, the Examining Attorney argues that, generally, alcoholic beverages are closely related goods which are sold in the same channels of trade (liquor stores and bars) to the same class of consumers. The Examining Attorney has also introduced articles from the Nexis database showing that consumers may drink or serve vodka and malt liquor beverages at the same time.

Applicant, on the other hand, argues that the marks' similarities are minimal and insufficient to cause a likelihood of confusion. Applicant has pointed to the specific differences in appearance and connotation of the respective marks and argues that it is not proper to dismiss the elements other than the letter "Z". Also, while conceding that malt liquor and vodka are sold in the same liquor stores, applicant argues that these goods are sold in separate sections of those stores and are differently packaged. Applicant's attorney states, brief, p. 7:

It is unlikely that someone looking for a refreshing malt liquor would inadvertently buy Vodka, as a result of confusion as to the source of the goods. Similarly, it is unlikely that somebody seeking to buy a

intention to use the mark in commerce.

premium Vodka would inadvertently purchase a malt liquor beverage, as a result of confusion as to the source. The level of care used in purchasing beverages makes it that much less likely that any confusion as to source would be probable.

After careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that applicant's mark and registrant's mark, as used in connection with the respective goods, are likely to cause confusion. Although the respective marks have differences, we agree with the Examining Attorney that the dominant, origin-indicating feature of both marks is the letter "Z". The remaining words in both marks are generic and have no source-indicating significance.

Also, while the goods are obviously not identical, as the Examining Attorney has pointed out, goods need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from the same source. A person may well shop for different alcoholic beverages in the same liquor store, and may drink and serve more than one type of alcoholic beverage. Likelihood of confusion involves more than the mistaken purchase of one product (vodka) instead of another (malt beverage), as applicant contends--it involves likelihood of confusion as

to source or sponsorship of the respective products because of the similarities of the marks. See, e.g., *In re Rexel Inc.*, 223 USPQ 830, 831 (TTAB 1984). We believe that a purchaser, aware of registrant's Z REFRESHING ALCOHIC BEVERAGE drink from a brewed malt base, who then encounters applicant's Z VODKA, is likely to believe that applicant's goods come from the same source that produced registrant's goods, or that the registrant sponsors or approves applicant's goods. See, e.g., *Schieffelin & Co. v. Molson Companies Ltd.*, 9 USPQ2d 2069 (TTAB 1989) (brandy vs. malt liquor, beer and ale); *Monarch Wine Co., Inc. v. Hood River Distillers, Inc.*, 196 USPQ 855 (TTAB 1977) (wine vs. whiskey, rum, brandy and vodka); and *In re AGE Bodegas Unidas, S.A.*, 192 USPQ 326 (wine vs. whiskey).

Decision: The refusal of registration is affirmed.

R. L. Simms

G. D. Hohein

B. A. Chapman
Administrative Trademark
Judges, Trademark Trial
and Appeal